

**Cross-boundary Movement of Physical Currency  
and Bearer Negotiable Instruments Bill (the Bill)**

**Response to the issues raised  
at the Bills Committee meeting on 28 March 2017**

**(a) Declaration requirements on persons in possession of a large quantity of currency and bearer negotiable instruments (CBNIs) who arrive at specified control points from places outside Hong Kong**

The declaration requirements on a person in possession of a large quantity of CBNIs who arrives at a specified control point from a place outside Hong Kong are stipulated in Clause 4 of the Bill. Clause 4(2) provides that the person must make a declaration in accordance with Clause 4(4). Clause 4(3) requires that if the person is a young person (Clause 2(1) provides that a young person means a person under the age of 16 years) accompanied by an adult who knows the person is a young person in possession of a large quantity of CBNIs, the adult must make the declaration for the young person.

2. Under Clause 2(3), a reference to “a large quantity of CBNIs” is a reference to CBNIs of a total value that is more than the amount of HKD120,000 as specified in Schedule 4. Clause 2(2) provides that a person is in possession of a thing if –

- (a) it is on the person;
- (b) it is in the baggage accompanying the person; or
- (c) for a person arriving in or about to leave Hong Kong on a cross-boundary conveyance, it is part of the personal belongings of the person carried on the conveyance or in the checked baggage of the person (whether or not carried, or to be carried, on the same conveyance).

3. Whether a person is required to make a declaration will be considered in accordance with the above provisions.

## **(b) Inaccurate declarations or disclosures**

4. Schedule 2 to the Bill sets out the information that a declaration made for the purposes of Clauses 4 and 6 must contain, including the value of the CBNIs in the possession of the person concerned. Clauses 4(7) and 6(5) provide that if any information contained in the declaration is false in a material particular, the person who makes the declaration commits an offence. Whether any information is false in a material particular will be considered on the basis of the facts and evidence in individual cases. Statutory defences to the offences are available. Clauses 4(10) and 6(7) provide that it is a defence for a person charged if the person establishes that at the time of the alleged offence the person did not know, had no reason to suspect, and could not with reasonable diligence have ascertained, that the information concerned was false in a material particular.

5. Under Clause 5(5), making a false disclosure that the person concerned is not in possession of a large quantity of CBNIs is an offence. Statutory defence to the offence is available. Clause 5(7) provides that it is a defence for a person charged if the person establishes that at the time of the alleged offence the person did not know, had no reason to suspect, and could not with reasonable diligence have ascertained, that the person concerned was in possession of a large quantity of CBNIs.

6. The above provisions enable the handling of inaccurate declarations or disclosures (including those caused by exchange rate fluctuations).

## **(c) Frequent travellers**

7. The purpose of the Bill is to detect the cross-boundary movement of a large quantity of CBNIs; stop and restrain CBNIs that are reasonably suspected to be crime proceeds or terrorist property, or are falsely declared or disclosed; and apply appropriate sanctions for making a false declaration or disclosure, pursuant to the relevant recommendation of the Financial Action Task Force (FATF). It is therefore important for accurate declarations to be made at the time of the actual arrival of CBNIs in Hong Kong (including those made by frequent travellers), thus enabling the law enforcement agency to take appropriate enforcement actions against false declarations or disclosures, to identify suspected crime proceeds or terrorist property, and to conduct risk assessment. The declaration requirements under the Bill are on par with those

implemented in other advanced jurisdictions (e.g. Australia, Canada, the US, Singapore and European countries).

**(d) Provision of information collected under the Bill**

8. FATF requires that information obtained through the declaration or disclosure of CBNIs should be made available to relevant domestic law enforcement agencies and allow for international cooperation and assistance, for combating money laundering and terrorist financing. In the context of the Bill, this will be pursued only where the law permits. Strict compliance with the Personal Data (Privacy) Ordinance (Cap. 486) will be observed. Overseas requests for assistance in provision of information collected under the Bill will be handled in accordance with the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) as appropriate.

**(e) Clause 28 of the Bill**

9. Under Clause 28, the Commissioner of Customs and Excise may exempt a person from the requirement of making a declaration or disclosure if the Commissioner is satisfied that, having regard to all the circumstances of the case –

- (a) it is not reasonably practicable for the person to comply with the requirement; and
- (b) it is reasonable that the person should be exempted from the requirement.

10. The intention of the provision is to enable the Commissioner, having taken into consideration all the circumstances of an individual case and being satisfied that the criteria as set out in paragraph 9(a) and (b) above are fulfilled, to effect the exemption. The exemption is subject to the consideration of the specific circumstances of a case, and should be rarely exercised.

**(f) and (g) - Use of “a large quantity of CBNIs” and “traveller”**

11. Clause 2(3) stipulates that a reference to “a large quantity of CBNIs” is a reference to CBNIs of a total value that is more than the amount as specified in Schedule 4 (i.e. HKD120,000). As this concept has been used in various provisions of the Bill, using this referential

definition helps improve the readability of the provision to which this concept is referred. A tag-definition “traveller” is provided in Clause 4(1). Whenever the term “traveller” appears in Clause 4, it will be given the meaning to which it is tagged. From a law drafting perspective, when drafting a definition, a descriptive term that contains a key word which gives a clue to the meaning of the defined term, instead of, for example, colourless terms like “relevant” or “prescribed” is preferred.

**Narcotics Division**  
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